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1 BEFORE THE POLICE BOARD
2 OF THE CITY OF CHICAGO
3 IN THE MATTER OF CHARGES }
4 FILED AGAINST } Case No. 13PB2827
5 SERGEANT DUANE A. BENNETT. }

6
7 REPORT OF THE VIDEOTAPED PROCEEDINGS
8 had at the hearing in the above-entitled matter
9 before Ms. Jacqueline A. Walker, Hearing
10 Officer, at 30 North LaSalle Street, Suite
11 1240, Chicago, Illinois, on May 21, 2013, at
12 the hour of 10:15 a.m.
13 - - - - -

14 APPEARANCES:

15 CITY OF CHICAGO
16 DEPARTMENT OF LAW
17 BY: MR. PATRICK POLK
18 30 North LaSalle Street
Suite 1020
Chicago, Illinois 60602,
19 on behalf of the Superintendent;
20 MR. DANIEL Q. HERBERT
21 On behalf of Respondent;
22 POLICE BOARD OF THE CITY OF CHICAGO
MR. MAX CAPRONI
23
24

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1 HEARING OFFICER WALKER: Next matter
2 before the Police Board is that of Sergeant
3 Duane A. Bennett, case number 13-2827.
4 MR. POLK: Patrick Polk for the
5 Superintendent.
6 MR. HERBERT: And good morning, Madam
7 Hearing Officer, Counsel, ladies and gentlemen
8 of the Board. My name is Dan Herbert and I
9 represent Duane Bennett.
10 HEARING OFFICER WALKER: Okay. This
11 matter is set for hearing today.
12 Is the Department ready to
13 proceed?
14 MR. POLK: We are.
15 HEARING OFFICER WALKER: Is the Respondent
16 ready to proceed?
17 MR. HERBERT: Yes.
18 HEARING OFFICER WALKER: Any preliminary
19 matters on behalf of the Department?
20 MR. POLK: Yes, Hearing Officer.
21 First we would like to enter the
22 stipulation that we discussed at the prehearing
23 conference into the record.
24 HEARING OFFICER WALKER: We'll hold for

1 the stipulations in a minute. Anything else?
2 MR. POLK: Separately, I realized I would
3 like to enter the relevant general order from
4 the Police Department and the Illinois compiled
5 statute that are referenced in the charges that
6 I hadn't entered into evidence, I would like to
7 also enter that.
8 HEARING OFFICER WALKER: We'll do that
9 momentarily. Anything else?
10 MR. POLK: That's all.
11 HEARING OFFICER WALKER: Anything of a
12 preliminary nature on behalf of the Respondent?
13 MR. HERBERT: Nothing.
14 HEARING OFFICER WALKER: Mr. Herbert, does
15 Sergeant Bennett acknowledge receipt of the
16 charges at least five days prior to today's
17 date?
18 MR. HERBERT: He does, yes.
19 HEARING OFFICER WALKER: Does he wish to
20 have those charges read?
21 MR. HERBERT: No. We'll waive formal
22 reading.
23 HEARING OFFICER WALKER: How does he plead
24 to the charges?

1 **MR. HERBERT:** Pleads not guilty.
2 **HEARING OFFICER WALKER:** Okay. All right.
3 On behalf of the Department, we will start with
4 an opening statement, please, Mr. Polk.
5 **MR. POLK:** Yes. Hearing Officer Walker,
6 members of the Board, counsel.
7 Sergeant Duane Bennett is charged
8 with violating the rules and regulations of the
9 Chicago Police Board. He is charged with
10 violating a law or ordinance impeding the
11 Department's efforts to achieve its policies
12 and goals, or bringing discredit upon the
13 Department and disobeying an order or
14 directive, whether written or oral.
15 All of the essential facts are
16 uncontested and he should be dismissed from the
17 Chicago Police Department.
18 On July 10th, 2012, Sergeant
19 Bennett was selected for a random drug test.
20 The first screening test was
21 positive for marijuana metabolites. A second
22 test was performed and it conformed that his
23 urine contained a specific marijuana metabolite
24 at a concentration of 33 nanograms

1 Bennett.
2 Mr. Bennett is a 49-year-old man,
3 married man, father of three children. Grew up
4 in the Chicago-land area. His kids are also
5 raised in the Chicago-land area. They attended
6 Mount Carmel high school. One of them
7 graduated from there. Is currently attending
8 Moraine Valley. His other son is a junior at
9 Mount Carmel. And his daughter is currently
10 going into eighth grade.
11 Sergeant Bennett lives with his
12 three children along with his wife who will be
13 a witness in this case as well.
14 Mr. Bennett is a Morgan Park High
15 School graduate. And he also graduated from
16 Oklahoma Christian University in 1987, wherein
17 he earned his degree in business
18 administration.
19 He also was an active athlete
20 there where he played on the baseball team in
21 college.
22 As I stated, Sergeant Bennett has
23 been a police officer for the Chicago Police
24 Department for 22 years.

1 milliliter.
2 He stipulated that the test was
3 properly performed; that there was a valid
4 chain of custody throughout the testing
5 process. He's also stipulated to the results
6 of the drug test. He does not contest the
7 essential facts behind the charges against him.
8 You will hear testimony from Dawn
9 Hahn from Quest Diagnostics. She will explain
10 the technology behind the tests that Quest
11 performed and how Sergeant Bennett's drug test
12 results are internally consistent.
13 The Superintendent cannot
14 tolerate an officer violating the rules and
15 regulations of the Police Department in this
16 manner.
17 The Superintendent respectfully
18 requests that you separate Sergeant Bennett
19 from the Department.
20 **HEARING OFFICER WALKER:** Thank you,
21 Mr. Polk.
22 Mr. Herbert.
23 **MR. HERBERT:** Good morning, again. It's
24 my pleasure to represent Sergeant Duane

1 His record is nothing short of
2 exemplary.
3 The record which will be admitted
4 to the Board shows he is a highly, highly
5 decorated police officer, both as a patrolman
6 and also as a sergeant.
7 What is more, his record will
8 show he's never been disciplined by the Chicago
9 Police Department.
10 And it's important in the context
11 of this case that we look at the character of
12 Sergeant Bennett. His character is once again
13 exemplary. He's active in his community. He's
14 a volunteer coach of the Ridge-Beverly little
15 league baseball community. He's coached
16 basketball at Sutherland Elementary.
17 What brings us here today as
18 Mr. Polk stated in his opening is a positive
19 drug test for the use of marijuana.
20 Now, when Sergeant Bennett
21 received the news that he had tested positive
22 for marijuana, his reaction was that of
23 somebody that was completely innocent.
24 His reaction was, I don't know

1 how this could be. I don't smoke marijuana. 2 There has to be a mistake. 3 As the evidence will show, he 4 went down to internal affairs to give a 5 statement, and his answers were the same there 6 as they're going to be at the Board when he 7 testifies, and that is that I didn't smoke 8 marijuana. There has to be a mistake. 9 He racked his brain to come up 10 with somehow a reason as to why this false 11 result could have happened. 12 And what the evidence will show 13 about the result in this matter is, the 14 evidence is above the minimal threshold level; 15 however, as our expert Dr. James O'Donnell -- 16 who is one of the leaders in the community of 17 pharmacological studies and has testified in 18 front of this Board, as well as numerous courts 19 within Illinois, over 350 times he served as an 20 expert witness, both for prosecution and 21 defense. Both for respondents and moving 22 parties. The evidence will show that this 23 level is of such a minimal level, the level 24 that was tested for, that it's more likely than	Page 9 1 His explanation is substantial. 2 And it's substantial because it supports the 3 doctor -- the doctor's opinion that this was an 4 environmental exposure. 5 What we're going to ask from the 6 Board is that Sergeant Bennett be given the 7 benefit of doubt in this case. 8 We need to look at Sergeant 9 Bennett and this positive test in the complete 10 and proper context. And that is within the 11 full utilization of the totality of 12 circumstances. 13 And I believe that at the 14 conclusion of this case, after looking at it in 15 that light, it's going to be clear that Duane 16 Bennett's exposure to marijuana was clearly 17 from environmental exposure and not from the 18 intentional use of which -- and the 19 significance of that is that Sergeant Bennett 20 certainly, certainly does not deserve to be 21 fired based upon being exposed to marijuana in 22 an innocent manner, being exposed to it in a 23 manner that was a result of him conducting his 24 job as a police officer.
Page 10 1 not that the level, the positive test, was a 2 result from environmental exposure versus 3 intentional use. 4 Duane Bennett talked about -- 5 when he was racking his brain to figure out 6 what could cause his positive result, he talked 7 about possibilities which may have led to this 8 result. 9 As I've stated, he was a police 10 officer for 22 years. He's taken dozens of 11 drug tests, and he's never flunked a drug test 12 until this test at issue. 13 He talked about how his son -- he 14 had caught his son smoking marijuana on a day 15 prior to this test. 16 He had talked about how as a 17 sergeant in the police department he had been 18 exposed to marijuana on numerous occasions, 19 both from entering rooms where fresh marijuana 20 had been smoke end as well as handling 21 marijuana. 22 He's also talked about how he 23 attended a concert and there was marijuana 24 being smoked.	Page 12 1 I'm going to ask the Board at the 2 conclusion of this case to find him not guilty 3 of the charges that are against him. Thank 4 you. 5 HEARING OFFICER WALKER: Okay. Thank you, 6 Mr. Herbert. All right. 7 Mr. Polk, before call your first 8 witness, we'll take those stipulations now. 9 MR. POLK: Do I tender them or read them? 10 HEARING OFFICER WALKER: You can just 11 tender them. Has Mr. Herbert signed it? 12 MR. HERBERT: Yes. 13 MR. POLK: Yes. 14 HEARING OFFICER WALKER: Okay. You can 15 just tell us briefly for the record what it 16 pertains to or what they pertain to. 17 MR. POLK: For the record, the two parties 18 stipulated that essentially the test was 19 performed properly; that the chain of custody 20 was intact; and that -- and to the actual 21 result of the two tests themselves, that the 22 first test was positive as a screening test and 23 that the second test, the confirmation test, 24 found 33 nanograms milliliter. And attached

1 are three Joint Exhibits. One, the specimen
2 affidavit. Two, the collection. And three,
3 the printout of the drug detail report itself.
4 **HEARING OFFICER WALKER:** All right. And,
5 Mr. Herbert, are you in agreement with those
6 stipulations?

7 **MR. HERBERT:** Yes.

8 **HEARING OFFICER WALKER:** Fine. Anything
9 else?

10 **MR. POLK:** Just those two. The general
11 order pertaining to drug tests and the ILCS
12 provision that I mentioned.

13 **HEARING OFFICER WALKER:** For judicial
14 notice?

15 **MR. POLK:** Yes.

16 **HEARING OFFICER WALKER:** I'll take those
17 as well. Thank you.

18 So the stipulations will be Joint
19 Exhibit 1, and the two documents, as you have
20 them marked correctly, judicial notice will be
21 Exhibits 1 and 2.

22 **MR. POLK:** Thank you.

23 (WHEREUPON, said
24 document was marked as

1 **world.**
2 Q. What is your position at Quest?
3 **A. I am a responsible person and
operations -- laboratory operations manager.**
4 Q. And what are your duties and
5 responsibilities in those two roles?

6 **A. My duties include just the day-to-day
operations of the laboratory. Also as
responsible person my duties include making
sure that there is a standard operating
procedure; that the employees have been trained
on that standard operating procedure; that
there's a training program for the employees;
that we have enough staff; that we have set
quality control limits for our assays, and that
they have been -- constantly being reviewed;
that we also have validated our methods and
that they'll hold up forensically. PT
corrective actions. Inspection corrective
actions.**

7 Q. How long have you held your current
8 position at Quest?

9 **A. I have been laboratory operations
manager since I believe September of 2010. And**

1 Joint Exhibit No. 1 for
2 Identification.)

3 **HEARING OFFICER WALKER:** Call your first
4 witness, please.

5 **MR. POLK:** The Superintendent calls Dawn
6 Hahn.

7 (Witness was duly
8 sworn.)

9 DAWN HAHN,

10 called as a witness herein, after having been
11 first duly sworn, was examined and testified as
12 follows:

13 **DIRECT EXAMINATION**

14 **BY MR. POLK:**

15 Q. Good morning.

16 **A. Good morning.**

17 Q. Could you please state and spell your
18 name for the record.

19 **A. Sure. Dawn Hahn. D-A-W-N. H-A-H-N.**

20 Q. Who is your employer?

21 **A. Quest Diagnostics in Lenexa, Kansas.**

22 Q. What is Quest Diagnostics?

23 **A. Quest Diagnostics is a leading
provider of clinical and drug testing in the**

1 **I was interviewed by the National Laboratory
2 Certification Program and named responsible
3 person in August of 2006.**

4 Q. What other positions have you held
5 previously at Quest?

6 **A. I have been positive certifying
scientist, a negative certifying scientist. I
8 have been a manager of the laboratory when it
9 was lab one. I was director of the laboratory.**

10 Q. How long have you worked for Quest
11 total?

12 **A. About 25 and a half years.**

13 Q. What is your educational background?

14 **A. I have bachelor of arts degree in
15 medical technology, and I am ASCP certified as
16 a medical technologist. And then I have my
17 years of experience here as employer solutions
or drug testing.**

18 Q. Do you have any other training?

19 **A. I have -- besides being ASCP certified
for my med tech degree, I also hold a
certification in -- it's called FTCB, Forensic
Toxicologist Certification Board.**

20 **I also -- being a national**

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1 laboratory inspector and a director of a SAMHSA
2 certified lab, I attend the annual SOFT
3 meeting, it's the Society of Forensic
4 Toxicologists, and they hold an annual meeting
5 where they offer training every year for the
6 inspectors and lab directors.

7 Q. What do you need in order to be
8 certified?

9 A. In order to be certified as a
10 forensic -- or the SAMHSA certification?

11 Q. Both.

12 A. In order to get your FTCB
13 certification, you have to sit for an
14 exam -- first of all, you have to have the
15 proper educational background, certain number
16 of hours in chemistry and biology, and then you
17 are allowed to sit for the test after you've
18 had three years of forensic toxicology
19 experience, and it's approximately a four-hour
20 exam that you have to sit for, and then once
21 you've passed the exam, then you have to keep
22 it up by continuing education.

23 Q. Have you been published?

24 A. I have a few publication articles out

1 A. Department of Health and Human
2 Services.

3 Q. What does certification involve?

4 A. The initial application for
5 certification for your SAMHSA certification
6 is -- first of all, you have to pass three
7 rounds of PTs, and PTs are proficiency testing
8 samples where they -- they being the NLCP
9 program, send you unknowns. They know what the
10 concentrations are or what's in those samples
11 but the laboratory does not. So you have to
12 test these samples. I think there's usually
13 between 20 and 25 per PT set. And then you
14 send your results back into the program, and
15 they grade you both on accuracy and
16 quantification.

17 Once you have passed your three
18 rounds of PT, they set you up for your initial
19 inspection, where they come in and they review
20 your procedures, your standard operating
21 procedures, your quality control. They start
22 interviewing the staff. And then if you've
23 passed that inspection, then they come back
24 again in three months. And then you're on -- I

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1 there on oral fluid heroin.

2 Q. You've already touched on this a
3 little bit, but what -- in general what
4 professional associations do you belong to?

5 A. Society of Forensic Toxicology, the
6 SOFT, MATT, which is Midwest Association of
7 Toxicology and Therapeutic drug monitoring.
8 I'm also a national laboratory certification
9 program inspector. I'm a CAP inspector which
10 is College of American Pathologists. I have
11 state certifications as a supervisor, director
12 with CAP, Nevada, New York.

13 Q. I'm going to ask you a few questions
14 about Quest Diagnostics.

15 A. Sure.

16 Q. Is Quest Diagnostics certified by an
17 agency?

18 A. Sure. We are both -- we are CLIA
19 certified. We are CAP certified again. That's
20 the College of American Pathologists. We're
21 also SAMHSA certified which is the Substance
22 Abuse and Mental Health Services
23 Administration, which falls under DHHS.

24 Q. And what's DHHS?

1 guess you want to call it like the circuit
2 where you get your quarterly PT sets every
3 year, and then you also get inspected several
4 times if you're a smaller laboratory category
5 four and below. They base this all on size of
6 the laboratory. You get inspected twice a
7 year. If you are a larger laboratory, a
8 category five, which we are at here Quest
9 Diagnostics in Lenexa, you get inspected by the
10 NLCP four times a year.

11 Q. Once certified, can certification be
12 revoked?

13 A. Yes, it can.

14 Q. How?

15 A. There can be a series of problems that
16 the laboratories had, such as reporting false
17 positives, maybe the RP has done something that
18 they didn't find was ethical. The RP may not
19 be spending enough time in the lab. They may
20 not have enough staff to -- for good results.

21 Q. What do you mean by RP again?

22 A. Responsible person.

23 Q. When was your lab initially certified?

24 A. 1994.

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1 Q. Has your lab always maintained
2 certification?
3 A. Yes.
4 Q. Does your lab conduct urine drug
5 testing for the City of Chicago?
6 A. Yes.
7 Q. In July of 2012, did your lab conduct
8 urine drug testing for the City of Chicago?
9 A. Yes.
10 Q. Are there standard procedures that
11 Quest follows in conducting drug tests?
12 A. Yes, there are.
13 Q. Are these procedures followed in every
14 case that a test is performed?
15 A. Yes, they are.
16 Q. I'm now going to ask you about the
17 specific test that we're here to discuss today.
18 I'm showing you what's previously
19 been admitted into evidence as part of a
20 stipulation, the third attachment to the
21 stipulation.
22 **HEARING OFFICER WALKER:** Mr. Polk, hate to
23 interrupt you. If we have the stipulation
24 already, where that document is attached, is it

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1 **HEARING OFFICER WALKER:** What would be the
2 necessity for the internal consistency if there
3 has been a stipulation as to the testing
4 procedure and the results?
5 **MR. POLK:** Because especially initially,
6 the Respondent was willing to stipulate to the
7 numerical results of the drug testing, but then
8 indicated that he wanted to challenge the
9 consistency of the results because of the
10 difference between the initial test and the
11 confirmation test. And so I just want to
12 explain how those tests are performed and why
13 this result makes sense, and it will be very
14 brief and also just help explain the results
15 that were stipulated to. And none of this is
16 in the stipulation.
17 **HEARING OFFICER WALKER:** But the results
18 themselves have been stipulated to. I see here
19 number nine, tested positive for 50 nanograms
20 per mil. Number 10, the confirmation test was
21 at 33 nanograms per mil.
22 So I'm a little confused as to
23 why this additional information would be
24 needed.

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1 necessary for this witness to have that
2 document?
3 **MR. POLK:** I'm only going to really talk
4 about the tests that were performed and the
5 technology behind them. I'm not going to get
6 into detail about the actual results.
7 It won't focus on the actual test
8 results which have been stipulated to, but
9 the -- the actual tests were performed and
10 particularly because it was mentioned in the
11 expert report that was brought by the
12 respondent. I really want to emphasize that
13 the test results are internally consistent.
14 **HEARING OFFICER WALKER:** Well, maybe we
15 should just get those, go right to those
16 questions, because frankly many of the
17 questions you've asked so far I think are
18 handled in the stipulations.
19 Is this witness serving as your
20 expert?
21 **MR. POLK:** No. We'll have a separate
22 witness as a rebuttal expert to talk about the
23 environmental factor that has been raised or
24 will presumably be raised by the Respondent.

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1 **MR. POLK:** Because the expert report that
2 was provided at the prehearing conference
3 raised the issue of the confirmation test being
4 particularly low and questioned its accuracy
5 because the initial test cutoff is 50 nanograms
6 per milliliter, while the confirmation test
7 tests specifically at 33 nanograms per
8 milliliter.
9 I want to prevent any confusion
10 as to what the two different tests -- they test
11 for two separate things, and I want to explain
12 with my witness how these results are
13 consistent.
14 **HEARING OFFICER WALKER:** Go ahead. But
15 keep in mind that I'm concerned if we have
16 stipulations why we're going through the extent
17 of the certification of Quest Diagnostics and
18 questions of that nature. All right. Proceed.
19 Just stick to the area that this witness will
20 help us -- or help the Board to understand.
21 **MR. POLK:** Thank you.
22 **BY MR. POLK:**
23 Q. As I mentioned, I'm handing you
24 attachment three to the stipulation.

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1 So looking at that document,
2 please tell us about the tests that were
3 conducted on laboratory session number 093273A.
4 **A. It was a ten-panel drug screen with**
5 **what's called specimen validity testing, and**
6 **that's creatinine, PH and oxidizing**
7 **adulterants.**
8 Q. Did the ten-panel drug test include a
9 test for marijuana?
10 **A. Yes, it did.**
11 Q. What is the name of the first test
12 that was performed?
13 **A. It's called an initial test or initial**
14 **screen.**
15 Q. And what type of test is that?
16 **A. The methodology that we use at Quest**
17 **Diagnostics is enzyme immunoassay.**
18 Q. What is an enzyme immunoassay?
19 **A. An enzyme immunoassay is -- basically**
20 **it's a competitive binding between an antigen**
21 **and an antibody. The reagent, one of the**
22 **antigens is labeled with an enzyme, and then**
23 **there's basically a color reaction that takes**
24 **place, and the amount of drug present in the**

1 **A. The cutoff is 50, so 50.**
2 Q. 50 what?
3 **A. Nanograms per milliliter. Sorry.**
4 Q. Who determines what the threshold is
5 to constitute a positive screening test?
6 **A. In many cases, it's the client. Often**
7 **times the client goes by what's called the**
8 **SAMHSA cutoffs for the same drugs that the**
9 **SAMHSA panel tests for.**
10 Q. Do you know what the City of Chicago
11 Police Department uses for its cutoffs?
12 **A. I believe they follow the SAMHSA**
13 **guidelines, so in this case it would be a 50**
14 **screen and 15 confirm, which is consistent with**
15 **the SAMHSA cutoffs.**
16 Q. What happens after the specimen
17 screens positive for marijuana metabolites?
18 **A. It goes on for confirmation testing.**
19 And when it goes on for confirmation testing,
20 another aliquot from the original bottle is
21 taken off the bottle and it's gone -- goes on
22 to extraction for the particular drug that it
23 screened positive for. After that it goes on
24 to the confirmation instrument, which is GCMS,

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1 **sample is directly proportional to the color**
2 **change.**
3 Q. What is the purpose of the first test?
4 **A. The purpose of the first test is to**
5 **basically report -- find your negatives and get**
6 **those reported.**
7 Anything that appears that there
8 might be something there or presumptive
9 positive then goes on for a confirmation test.
10 Q. Was it positive in this case?
11 **A. The initial test, yes.**
12 Q. Does the enzyme immunoassay test
13 detect multiple marijuana metabolites?
14 **A. Yes, it does.**
15 Q. Approximately how many?
16 **A. In the package reagent insert, it**
17 **showed it had tested for approximately -- I**
18 **believe it was seven similar -- structurally**
19 **similar compounds, and all seven did also**
20 **trigger a positive at very similar**
21 **concentrations of 50 and a hundred.**
22 Q. What is the lowest level of marijuana
23 metabolites that would return a positive test
24 result on the enzyme immunoassay test?

1 **that stands for gas chromatograph mass**
2 **spectrometer.**
3 Q. What is GCMS?
4 **A. GCMS, first of all, it's the standard**
5 **in drug testing for identifying a drug. It's**
6 **two instruments that have been put together, a**
7 **gas chromatograph and a mass spectrometer. The**
8 **gas chromatograph separates the compounds that**
9 **may be in the urine and then the mass**
10 **spectrometer identifies it, that particular**
11 **compound, and then quantitates it.**
12 Q. Is GCMS recognized as reliable in the
13 scientific community?
14 **A. Yes, it is.**
15 Q. And what were the results in this
16 case?
17 **A. In this particular case, 33 nanograms**
18 **per milliliter.**
19 Q. And looking at the document in front
20 of you, it looks like the word metabolite is
21 singular on the confirmation test. Does that
22 mean that it detected only a single marijuana
23 metabolite?
24 **A. At the confirmation you're only**

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1 looking for one. You are looking for the
2 primary metabolite of marijuana and that
3 is -- that's a few different names, but
4 marijuana, or THCA, THC acid, carboxylic THC,
5 they all mean the same thing.

6 Q. Is that also called THC-COOH?

7 A. Yes.

8 Q. And what is the cutoff level for
9 marijuana metabolite under the GCMS test?

10 A. 15 nanograms per milliliter.

11 Q. And who determines what the threshold
12 is to constitute a positive confirmation test?

13 A. Again, it can be client driven or if
14 they're using the SAMHSA guidelines, it's the
15 federal register and SAMHSA that determines
16 what those cutoffs are.

17 Q. And was the marijuana metabolite in
18 laboratory session number 093273A above that
19 threshold?

20 A. Yes, it was.

21 Q. Now, specifically I notice that the
22 confirmation test was 33 nanograms per
23 milliliter, and that's lower than the threshold
24 for the initial screening test which was 50

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1 nanograms per milliliter. Can you explain how
2 that happened?

3 A. Sure. We touched on it. The
4 marijuana screen picks up multiple metabolites
5 of marijuana, not just THCA, and so it's
6 looking for, like I said, multiple metabolites
7 that are in that urine. When you're going to
8 confirmation, you're just looking for the
9 primary metabolite that is in urine, and that
10 is the THC acid or THC-COOH.

11 Q. Is this test result internally
12 inconsistent?

13 A. No, it's not.

14 Q. Why not?

15 A. Again, you're looking for the multiple
16 metabolites in the initial test, where in the
17 confirmation test you are only looking for one
18 metabolite.

19 MR. POLK: Thank you. No further
20 questions.

21 HEARING OFFICER WALKER:

22 Cross-examination.

23 CROSS-EXAMINATION

24 BY MR. HERBERT:

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1 Q. Good morning, Ms. Hahn.

2 A. Good morning.

3 Q. How are you?

4 A. Good. How are you?

5 Q. Good. Thanks. You didn't work on the
6 sample or you didn't do any testing on the
7 sample that was provided by my client,
8 Mr. Bennett, in this case, correct?

9 A. No. I mean you are correct. No, did
10 I not do any testing.

11 Q. And fair to say that your knowledge is
12 strictly limited to the reports that you have
13 viewed in this case?

14 A. I guess I'm not following what you're
15 asking me.

16 Q. Probably a bad question.

17 You don't have any independent
18 knowledge of Mr. Bennett providing a urine
19 sample and that urine sample being tested by
20 Quest?

21 A. All I can tell you that the sample
22 that was under 093273A was what was tested. I
23 don't know whose it was or anything like that,
24 if that's --

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1 Q. Okay. You don't know who tested it?

2 A. I do. It's in the lit package.

3 Q. And that lit package is contained
4 within the reports?

5 A. Yes. Yeah, we provide all that,
6 uh-huh.

7 Q. So it would be fair to say that your
8 review of the reports that's basically --

9 A. Yes, correct.

10 Q. -- that's your knowledge for this
11 case?

12 A. Yes, yes.

13 Q. And you talked about how certification
14 can be revoked for certain testing agencies.

15 A. Uh-huh.

16 Q. And you indicated that reporting of
17 false positives could be grounds for
18 revocation?

19 A. Could be.

20 Q. Would it be fair to say that false
21 positives are not uncommon when testing for
22 drug use?

23 A. Well, they're not common, because
24 otherwise more labs would be getting revoked.

1 Q. But they certainly do? 2 A. They do happen, usually it's clerical 3 errors. Yes, they do happen. 4 Q. Okay. With regard to these drug tests 5 results, does Quest implement a margin of error 6 into the results? 7 A. There is -- I don't know if I'm 8 following, but our quality control, like 9 when -- we have to run quality control with all 10 of our confirmation batches, and the quality 11 control, the acceptable range in the industry, 12 is plus -- you establish a mean which means you 13 ran it 20 times and you've determined what that 14 average is. And then you can be plus or minus 15 20 percent for your QC. So if your QC can be 16 plus or minus 20 percent, the specimen probably 17 would follow that same -- accuracy range, if 18 that's what you're asking. 19 Q. Okay. So it would be essentially a 20 20-percent margin of error, correct? 21 A. Accuracy, yes. 22 Q. 20-percent accuracy to the test 23 results? 24 A. Yes.	Page 33	1 levels, depending on the client, correct? 2 A. Client, the governing agency, 3 depending on what they're using, yes. 4 Q. And in this case, for the confirmation 5 test, the cutoff level or the threshold level 6 was 15 NGs, correct? 7 A. Correct. 8 Q. And fair to say that other clients use 9 a higher cutoff level? 10 A. Actually, most use a lower if it's 11 non-regulated. 15 is about the highest that we 12 offer for -- the only cutoff that SAMHSA allows 13 first of all. 14 Most clients if they're in the 15 non-government sector, they want to go lower. 16 Q. But are you aware of clients that have 17 higher threshold levels? 18 A. Actually, I'm not. 19 Q. Okay. 20 MR. HERBERT: Nothing further. 21 HEARING OFFICER WALKER: Redirect? 22 MR. POLK: Very briefly. 23 REDIRECT EXAMINATION 24 BY MR. POLK:	Page 35
1 Q. And that's 20-percent accuracy plus or 2 minus the results? 3 A. Plus or minus. That's what we do with 4 our QC, so... 5 Q. Okay. And you talked about the 6 different -- the initial test and then the 7 confirmation test? 8 A. Yes. 9 Q. And the confirmation test, is it the 10 same sample used for the confirmation test 11 that's used for the initial test? 12 A. It's the same parent bottle that is 13 used. We never test out of the original 14 bottle. We always take what's called -- we 15 call aliquot, but you're taking off a portion 16 of that sample for the initial test. And then 17 that aliquot is discarded and then you take 18 another portion of the original bottle for the 19 confirmation test. That way it's two 20 independent samplings from the parent bottle, 21 and that parent bottle doesn't get contaminated 22 that way. 23 Q. Okay. And you talked about how 24 there's different threshold levels or cutoff	Page 34	1 Q. You were asked if it was not uncommon 2 to have false positives. Do you remember that? 3 A. Uh-huh. 4 Q. Do you check for false positives in 5 your lab? 6 A. It's kind of -- that's kind of a hard 7 question, hard thing to look for, because 8 you've already reported that result. 9 Now, the inspectors when they 10 come in, they do look through your data. 11 Part of the inspection process is 12 to audit all your -- to audit your records. We 13 have to send them all of our positives that we 14 have reported throughout the quarter and then 15 they pick records to audit. And they look to 16 verify our accuracy, to make sure that we're 17 not reporting false positives. 18 So we have an outside agency that 19 comes in and does that for us quarterly. 20 Q. So part of your inspection process is 21 you are tested against false positives, 22 correct? 23 A. They're looking at your data to make 24 sure what you reported was forensically	Page 36

1 supported.

2 Q. And --

3 A. So part of that process would be to
4 make sure that you did report the -- you were
5 accurate with what you reported, so that your
6 quantification supported the positive that you
7 reported.

8 Q. And you get inspected four times a
9 year you said?

10 A. By SAMHSA, yes. And we have other
11 inspection agencies as well that do independent
12 audits and clients that come in and do
13 independent audits as well.

14 Q. And does your lab pass those
15 inspections?

16 A. Yes, yes.

17 MR. POLK: Nothing further.

18 MR. HERBERT: Just briefly.

19 RECROSS-EXAMINATION

20 BY MR. HERBERT:

21 Q. You said that inspectors will conduct
22 an audit of samples, correct?

23 A. Uh-huh. Of records.

24 Q. Do you know if the sample that was

1 break was had.)

2 HEARING OFFICER WALKER: Back on the
3 record.

4 Before we have the witness sworn
5 in, I don't know that we had the Department
6 rest. Of course subject to rebuttal in your
7 case in chief.

8 MR. POLK: Yes, we rest subject to
9 rebuttal.

10 HEARING OFFICER WALKER: Respondent's
11 case. Respondent's first witness. Thank you.

12 (Witness was duly
13 sworn.)

14 JAMES O'DONNELL,
15 called as a witness herein, after having been
16 first duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MR. HERBERT:

20 Q. Good afternoon, Doctor. How are you?

21 A. Good. Thank you.

22 Q. Would you please introduce yourself
23 and spell your last name for the record?

24 A. James Thomas O'Donnell. O,

1 used in this case was chosen for an audit?

2 A. No, I don't.

3 Q. Do you have any knowledge that
4 this -- that this result was reviewed by any
5 inspectors whatsoever?

6 A. No, I don't.

7 MR. HERBERT: Nothing further.

8 MR. POLK: Nothing based on that.

9 HEARING OFFICER WALKER: Thank you. You
10 may be excused. Don't forget your microphone.
(Witness Excused.)

11 HEARING OFFICER WALKER: Okay. The
12 Department have any other witnesses?

13 MR. POLK: We have no further witnesses
14 for our case in chief.

15 HEARING OFFICER WALKER: Okay.
16 Respondent?

17 MR. HERBERT: I have witnesses. And I
18 told them to come here a little bit later.

19 HEARING OFFICER WALKER: Off the record a
20 moment.

21 (Discussion off the
22 record.)

23 (WHEREUPON, a luncheon

1 apostrophe, D-O-N-N-E-L-L.

2 Q. And, Dr. O'Donnell, by whom are you
3 employed?

4 A. I'm employed by the Rush Medical
5 College and also by my private firm Pharma
6 Consultant, Incorporated.

7 Q. And what other work do you do
8 professionally?

9 A. All my work is encompassed between my
10 teaching and consulting practice.

11 Q. Okay. And are you licensed as a
12 pharmacist?

13 A. I am. I've been licensed since 1969.

14 Q. Please explain what pharmacology is.

15 A. Pharmacology is study of the actions
16 of drugs on the body, both in man and animals.
17 It encompasses discovery, identification,
18 analysis, evaluation, testing, and also it
19 encompasses teaching the topic to those who
20 need to learn pharmacology in order to practice
21 their professions, including physicians,
22 nurses, pharmacists, podiatrists, dentists.

23 Q. And, Doctor, prior to the hearing, you
24 tendered a CV in this case?

1 A. Yes, sir.

2 Q. Okay. And it's already been
3 stipulated to with the parties you are an
4 expert in the area of pharmacology.

5 I notice that one of the entries
6 in your CV talks about some of the consultant
7 work you did and that being that you worked for
8 the Chicago Police Department and the City of
9 Chicago at one point?

10 A. Yes. The work for the police
11 department was a singular engagement, pro bono
12 engagement, as a matter of fact, teaching
13 narcotics officers the pharmacology of the some
14 of the drugs they were arresting people for
15 selling.

16 I have a fairly ongoing
17 consulting relationship with law department in
18 civil matters, and I've testified before the
19 Police Board for the City at least once.

20 Q. If I can ask you what is -- is
21 toxicology a part of pharmacology?

22 A. Yes, it is. Pharmacology, the actions
23 of drugs, we prescribe and use them for
24 beneficial effect, but they clearly have toxic

1 interpreted urine drug tests and other media
2 for drug tests over the past 30, 35 years.

3 Q. And you published on that topic as
4 well as you've described?

5 A. I have.

6 Q. And you've testified in legal matters
7 aside from the testimony that you provided for
8 the Police Board that you talked about?

9 A. On drug testing?

10 Q. Yes.

11 A. Yes, frequently.

12 Q. If you can describe the
13 pharmacokinetics of cannabis?

14 A. Well, cannabis is a substance that has
15 multiple metabolites. Some are described
16 upwards of 20. The principle active ingredient
17 or ingredient that people smoke it or consume
18 it for is what we refer to as THC,
19 tetrahydrocannabinol. And it can be absorbed
20 orally, topically, smoking. Technically you
21 could even inject it. The half life or the
22 period of time of greatest effect of THC is
23 limited to several hours.

24 As I described it, especially

1 effects. And indeed as part of my teaching
2 responsibilities, I teach toxicology
3 principles.

4 Q. And what is your background regarding
5 pharmacology as it relates to toxicology?

6 A. Well, part of the board certification
7 is an examination on toxicological principles
8 and testing. I've published five books very
9 heavily steeped in pharmacology -- excuse me,
10 pharmacology and toxicology, primarily the
11 adverse effects of drugs. For instance, three
12 of them are titled Drug Injury.

13 The assay work that's used in
14 developmental pharmacology is the same assay
15 that is part of the safety pharmacology or
16 testing. And I've spent both in college
17 learning the instrumentation, the science
18 behind the analytical chemistry, and also
19 research sabbatical what I thought was mid
20 career 30 years ago.

21 Q. Have you had any training or
22 experience interpreting urine drug samples?

23 A. Yes. It's -- the training is part of
24 the analytical chemistry experience. I've

1 through smoking, develop several metabolites
2 that have longer half life, which is
3 technically limited to the amount of time it's
4 in the blood. But a very long what I call body
5 residence time. That's not a technical term.
6 But it helps explain the fact that the -- when
7 the marijuana goes into the fat, it's stored in
8 the fat because it's highly what called
9 lipophilic. And the reason why, for instance,
10 you can detect a positive marijuana metabolite
11 seven days, 14 days, even 30 days after
12 exposure is because they -- the metabolite that
13 is trapped in the fat eventually leaches out of
14 the fat and is filtered in the kidney and
15 deposited in the bladder. The bladder being a
16 collection device, concentrates or makes the
17 relative amount of the marijuana metabolite in
18 a volume of urine much, much greater than could
19 be detected in blood. Therefore it's not
20 detected in blood, but it is in urine. So it
21 is a -- it has -- the kinetics is -- I should
22 define that as really a timeline, how long the
23 drug stays in the body. It's a very unusual
24 kinetics. The kinetics will vary from one

1 metabolite to another.

2 But the important take-home
3 message is the active ingredient is
4 short-lived. It's gone from the body within a
5 day usually. But metabolites have very long
6 body residence time.

7 Q. Okay. And are there factors regarding
8 elimination?

9 A. Absolutely. Absolutely. It
10 could -- it's a factor of dose. It's a factor
11 of frequency of use. Or chronic use. It's a
12 factor of the amount of fat content in the
13 body. Factor of hydration. Factor of diet.
14 How much protein is in the diet and therefore
15 nitrogen in the urine.

16 Indeed, the -- repeating the same
17 dose of exposure of marijuana to the same
18 individual over consecutive days will result in
19 different -- consecutive periods allowing for
20 wash-out, will result in different levels
21 detected, because the detection level of
22 metabolite in the urine changes by the hour of
23 the day and the degree of hydration of the
24 subject on that day.

1 has the potential for absorption from the skin.

2 And we have -- we generally have
3 30 or so therapeutic agents that we actually
4 administer to patients where we infuse a patch
5 with a drug and put the patch on the patient
6 either daily or weekly for a chronic exposure
7 of the substance.

8 So lungs, therapeutic or
9 adulterant, environmental, gaseous, particulate
10 and to a lesser extent skin.

11 Q. So lungs can certainly absorb
12 secondhand smoke?

13 A. Absolutely. That's one of the driving
14 forces for eliminating smoking in public and
15 private places, because even a person who
16 elects -- the person who wants to avoid smoking
17 and voluntarily does not suffer from the
18 damage of the secondhand smoke just by the fact
19 that it's in the air and they inhale it.

20 Q. Doctor, approximately how many times
21 have you interpreted urine drug screens?

22 A. Well, at least several hundred, if not
23 approaching a thousand. 30 years.

24 Q. And describe, you touched on it

1 So a high degree of variance in
2 the amount of marijuana metabolite that is
3 excreted in the urine, collected in the urine,
4 and therefore available for testing.

5 Q. Okay. And I know you talked briefly
6 about the lungs being a good absorption
7 surface.

8 My question to you is, can
9 adulterants be absorbed in the lungs?

10 A. Anything we breathe can be absorbed
11 through the lungs. We breathe exhaust fumes.
12 We administer -- that's how we get oxygen, we
13 breathe.

14 The lungs are probably more
15 efficient for absorption than the gut is for
16 absorption of nutrients. So anything that's
17 either particulate matter in the air or even
18 volatilized or gas matter, if it enters the
19 lungs it has potential for absorption.

20 The same can be said about the
21 skin, although certainly not at the same
22 efficiency, but anything that's deposited on
23 the skin, unless it's something like a Lithium
24 ion, a very highly polar molecule, certainly

1 earlier, but any written or published articles
2 in the field of toxicology?

3 A. I have several chapters in three of my
4 books. One is specifically forensic drug
5 testing that describes urine drug testing and
6 the methodologies used. A few chapters in my
7 books are entitled Forensic Pharmacist and the
8 Roles of Interpretation. And then I have in
9 the same books a different chapter on -- titled
10 Recreational Drugs, and the drugs that are
11 addressed to a great extent are alcohol,
12 marijuana and cocaine, and within those
13 chapters I think there should be drug testing
14 discussed in those chapters as well.

15 And then I've published for a
16 nursing newspaper interpretation of toxicology
17 tests, including urine drug tests.

18 Q. Okay. And have you written or
19 published any articles concerning marijuana?

20 A. What I've described. I don't know
21 that I have any freestanding articles. But my
22 chapters definitely discuss marijuana to a
23 great extent.

24 Q. Okay. Have you ever lectured or

1 taught others about the interpretation of urine
2 drug screens?
3 **A. Yes. Several times.**
4 Q. Have you ever been qualified as an
5 expert to provide testimony?
6 **A. I've testified in court over 350**
7 **times. On the question of urine drug screens,**
8 **there have been a few. Most of the time when**
9 **I'm engaged in urine drug screen matter, the**
10 **issue of the urine drug test is not allowed**
11 **into court because of the lack of scientific**
12 **validity of the test.**

13 Q. Okay.

14 **A. So I don't go to court on it, because**
15 **my work is before court to help the lawyers**
16 **argue that it shouldn't be discussed.**

17 Q. Okay. And do you testify strictly for
18 defendants or respondents?

19 **A. No, no, testify on both sides. I**
20 **think in my career my third Police Board**
21 **hearing. I had one of which was for the**
22 **sheriff's office or involving a deputy sheriff,**
23 **in a sheriff board. Majority of my**
24 **consultations and testimony is in civil**

1 **recreational drug chapter is in here, and**
2 **forensic pharmacist chapter is in here, and**
3 **then there's two chapters on drug testing, one**
4 **is forensic drug testing and the other is**
5 **workplace drug testing.**

6 **So there's an extensive**
7 **description of urine drug tests and the**
8 **analytical methods used for such testing.**

9 **HEARING OFFICER WALKER:** Excuse me,

10 Mr. Herbert, what's the name of the --

11 **MR. HERBERT:** The name of it is Drug

12 Injury, Liability, Analysis and Prevention,

13 third edition.

14 **BY MR. HERBERT:**

15 Q. Doctor, if I can refer you to the case

16 at issue here.

17 What did you review prior to

18 giving any opinions in the case of my client

19 Duane Bennett?

20 **A. I reviewed the Chicago Police**
21 **Department internal affairs transcript report**
22 **test results showing a positive screening and**
23 **confirmation for marijuana metabolite. I**
24 **reviewed Dr. Conver's report, OMS Group,**

1 **matters. And it's certainly equally divided in**
2 **there. And fairly criminal matters, I work for**
3 **prosecutors but mostly for defendants.**

4 Q. And what subjects have you testified

5 to?

6 **A. Oh, half my work is involving**
7 **recreational drugs, primarily alcohol, but**
8 **marijuana is frequent, followed by cocaine and**
9 **methamphetamine.**

10 **And then a whole arena of**
11 **prescription drugs, even over-the-counter**
12 **drugs, describing the injury, the mechanism of**
13 **injury, or did the drug cause the alleged**
14 **injury.**

15 **And then finally, since I am a**
16 **pharmacist, I do testify on the standard of**
17 **care of pharmacists.**

18 Q. And you testified about some of your

19 publications. If I can just identify this book

20 as Respondent Exhibit No. 1. And is this one

21 of the publications that you testified?

22 **A. Yes. This the third edition of Drug**
23 **Injury, Liability, Analysis and Prevention.**

24 And the two chapters I described, the

1 **Occupational Medical Specialists.**

2 **I reviewed the hair test result.**

3 **And also a urine test result from a -- I'm**
4 **blocking the name of the clinic. A clinic on**
5 **the far southwest side.**

6 Q. And those are the two tests -- when

7 you talk about that subsequent urine test and

8 that hair test, those were the tests that

9 were -- that were done at the request of my

10 client, correct?

11 A. Yes, yes. And I reviewed some -- a

12 few articles from my personal library. And not

13 reviewed, but I interviewed Sergeant Bennett

14 also after --

15 Q. Why did you examine Sergeant Bennett?

16 A. Well, it's important to get his side

17 of the story as part of forensic analysis to

18 determine the timing, the tempo relationship of

19 his claim of being exposed to environmental

20 marijuana, his affirmation of denial of

21 marijuana use, and just, you know, add more

22 context to the information that was provided by

23 the police report.

24 Q. Okay. And if we were to assume that

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1 what Sergeant Bennett stated how he was exposed
2 to marijuana, is it possible that the positive
3 test result for the sample submitted to the
4 police department was the result of
5 environmental exposure as opposed to active or
6 intentional ingestion?

7 **A. In my opinion, yes, it is possible
8 based on the accumulation of those
9 environmental exposures.**

10 Q. And the environmental exposures that
11 he talked to you about and that were identified
12 in the internal affairs reports talks about how
13 his son was smoking marijuana in a close
14 proximity to him, to Sergeant Bennett?

15 **A. It was in his son's room. He knew he
16 had smoking -- he was smoking marijuana. He
17 described being in a concert where marijuana
18 was being smoked. He described being called to
19 a scene, a shop where he knew that marijuana
20 was -- he could smell marijuana there.**

21 Q. And that was a call -- that was a call
22 on the police department, correct?

23 **A. Yes, yes. And then described both in
24 the IAD record as well as to me that his desk**

1 **A. Well, just to summarize, it's -- you
2 would expect there to be marijuana ingestion,
3 inhalation, and potential for detectability.
4 It depends on the amount of the dose and the
5 concentration of the urine.**

6 **Number two, the passive ingestion
7 of marijuana through secondhand smoke has been
8 reported, and I think that it's more likely
9 that this positive test, this positive finding
10 that resulted in us being here today, this
11 case, was as a result of environmental
12 exposures. It's not a single exposure. It's
13 multiple, within a short period of time. And
14 although -- and I recognize Dr. Conver's report
15 that the -- it's not possible for this to
16 happen at this amount of exposure that's
17 described. It is possible. It has been
18 reported. Levels at the level detected
19 by -- in Sergeant Bennett's urine have been
20 described. Because of the variance, as I
21 described earlier, what I would describe as a
22 physiological variance, and the limited number
23 of subjects that are the bases for the
24 conclusions that you have to have a certain**

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1 **was close to a narcotic vault or narcotic
2 locker where one can smell the presence of
3 marijuana.**

4 **So as I said, cumulatively, we
5 have four exposures. Clearly, marijuana is in
6 the air. Clearly, that marijuana gets in one's
7 body. If you can smell it, you're inhaling it.
8 So it's certainly possible.**

9 Q. Okay. And can urine drug tests show
10 positive results after passive or environmental
11 exposure?

12 **A. Oh, definitely. I mean -- the
13 articles I referenced in my report describe
14 the -- some of the research that's done on
15 that. And, again, this is follow-up to a much
16 larger body of science document and the risk of
17 secondhand smoke from tobacco and cigarettes.**

18 Q. And your opinions, are they based upon
19 a reasonable degree of pharmacological
20 certainty, as well as your background, training
21 and experience?

22 **A. Yes, sir, they are.**

23 Q. And, finally, what are your opinions
24 regarding this drug test?

1 **number of cigarettes in a closed room, in my
2 opinion, as I said, with the accumulation of
3 these four exposure vectors, if you will, it's
4 more likely than that is the cause than a -- an
5 intentional smoking of a cigarette.**

6 **And also the fact that a
7 subsequent test was negative is telling that
8 the amount that was present, if, indeed,
9 the -- I'm not disputing that marijuana was
10 detected as reported in the IAD report. But
11 the levels were very low.**

12 **So a few days later there was not
13 enough there for there to be a positive test in
14 that screening test.**

15 **And as I said earlier, if
16 you -- you can have -- you wouldn't expect a
17 positive hair test from a single exposure to
18 marijuana smoking. It's certainly not from
19 passive exposure unless you live in the
20 environment. But that negative hair test is
21 also -- to me is evidence that there's no
22 chronic marijuana use here. I know that's not
23 important for your purposes here.**

24 **But just so you hear a single**

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1 **A. In the CP and T article, Exhibit 3**
2 that you just handed me?
3 Q. Yes.
4 A. Let me see. Well, there are reported
5 levels and they would have tested them with
6 GCMS for the active ingredient. I'm sorry, for
7 the blood. So you're correct, there are no
8 urine tests.

9 Q. Looking at table two on page 252 for
10 this article, isn't it true that the two
11 thresholds they used for their enzyme analysis
12 to say 20 nanograms per milliliter and then 100
13 nanograms per milliliter, and they inferred a
14 level for 75 nanograms per milliliter?

15 **A. Yes, sir.**

16 Q. Isn't it true that the City of Chicago
17 drug testing program tests at 15 nanograms per
18 milliliter for their screening tests?

19 **A. Yes, sir.**

20 Q. So a positive for 20 nanograms per
21 milliliter does not necessarily mean that they
22 would have had positive for 50 nanograms per
23 milliliter, correct?

24 **A. Correct.**

1 of questioning for unrelated tests.
2 **HEARING OFFICER WALKER:** I'm sorry?
3 **MR. HERBERT:** I object to the relevance of
4 this unrelated test to the case at issue. It
5 really doesn't bear any relevance on this case.

6 **HEARING OFFICER WALKER:** What is the
7 relevance, Mr. Polk?

8 **MR. POLK:** He said that he reviewed the
9 literature as evidence of the fact that
10 secondhand smoke could cause positive urine
11 tests for marijuana metabolites and this is
12 what he based his opinion on. I think it is
13 highly relevant.

14 **MR. HERBERT:** To be fair, this was one of
15 the things that he relied upon to come up with
16 his opinion, not solely this document.

17 **HEARING OFFICER WALKER:** Right. You will
18 have an opportunity to do that in redirect. So
19 objection is overruled. He did say he used --
20 this is one of the things.

21 Do you want to repeat the
22 question or --

23 **BY MR. POLK:**

24 Q. Isn't that correct?

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1 Q. And looking at the left half of table
2 two on page 252, it looks -- isn't it correct
3 that in the room with four marijuana cigarettes
4 in their 8.2 by 6.8 by 8 foot room, none of the
5 subjects had even 75 nanograms per milliliter
6 in the emit test?

7 **A. None of them exceeded that threshold,**
8 yes.

9 Q. Isn't that -- the emit test, isn't
10 that the same as enzyme immunoassay?

11 **A. Yes.**

12 Q. And doesn't that test for all
13 marijuana metabolites?

14 **A. Yes.**

15 Q. So this is different from the GCMS
16 test, correct?

17 **A. Yes, it is.**

18 Q. It tests for -- GCMS tests for a
19 subset of what the emit tests for, correct?

20 **A. Yes.**

21 Q. So they had less than 75 nanograms per
22 milliliter for all marijuana metabolites in the
23 room with four marijuana cigarettes, correct?

24 **MR. HERBERT:** I would object to the line

1 **A. Give me the question again.**

2 Q. So looking at the left hand of table
3 two, when there are four marijuana cigarettes
4 in the 8.2 by 6.8 by 8 foot room with no
5 ventilation, isn't it true that none of the
6 test subjects had 75 nanograms per milliliter
7 of total marijuana metabolites in their urine?

8 **A. It's true; however, as a scientist**
9 looking at this, we have five subjects. This
10 is not created science. The only thing you can
11 say about this is there were no positives or
12 none exceeded the 20 nanogram threshold. It's
13 too small a sample to draw any conclusions from
14 it.

15 Q. Isn't this one of the bases for your
16 opinion?

17 **A. This is an article I referenced. The**
18 article references a wide variance of levels
19 from the exposures that limited number of
20 subjects participated in. Because I -- because
21 I referred to this article doesn't mean that
22 the left-hand table of -- for measuring with a
23 20 nanogram threshold says that because of the
24 findings are negative, doesn't mean this isn't

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1 going to happen. This is five samples.
2 Marijuana is used by millions of people.
3 Marijuana is inhaled from the environment. It
4 will circulate. It will get into the urine,
5 and in some tests it will be positive.

6 Q. Isn't this the only article that you
7 specifically referenced in your opinion?

8 A. It's the only article I brought with
9 me. I didn't feel the need to bring other
10 articles.

11 Q. So isn't it fair this --

12 A. Sorry. I brought two articles with
13 me.

14 Q. Did you -- didn't you only reference
15 this article in your written opinion that you
16 wrote on March 11th of 2013?

17 A. Yes.

18 HEARING OFFICER WALKER: So hold on a
19 moment. We need to -- do you have an actual
20 copy of that report? And has it been marked?

21 MR. POLK: It was on Respondent's list of
22 exhibits, so I didn't bring spare copies. I
23 just have my own copy.

24 HEARING OFFICER WALKER: Okay. But I

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1 don't believe you used this. I happen to have
2 a copy in the file. But I did not -- I don't
3 believe it was used by Mr. Herbert in his --
4 just the book I have a reference to here.

5 MR. HERBERT: Right. I didn't cite to it.

6 HEARING OFFICER WALKER: He hasn't used
7 it. Let's mark it Superintendent's No. 4.

8 (WHEREUPON, said
9 document was marked as
10 Superintendent Exhibit
11 No. 4 for
12 Identification.)

13 THE WITNESS: Excuse me. I may have
14 misspoken. I don't see it referenced in my
15 report.

16 BY MR. POLK:

17 Q. Is this the same copy you have?

18 A. Yes.

19 MR. HERBERT: Where is it referenced I
20 guess is the question?

21 THE WITNESS: 1986 article on top, Journal
22 of Clinical Pharmacology, number one. Yes, it
23 is.

24 BY MR. POLK:

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1 MR. POLK: I don't have a copy of this.
2 It wasn't in the report. And I couldn't find
3 any other that were available online.

4 HEARING OFFICER WALKER: Where was it
5 referenced? Where did you get this?

6 MR. POLK: He said he brought that with
7 him and that was the other article.

8 HEARING OFFICER WALKER: The witness just
9 said he brought it with him?

10 MR. POLK: Yes.

11 HEARING OFFICER WALKER: And you're
12 questioning --

13 MR. POLK: I'm questioning were there GCMS
14 results in that second article.

15 HEARING OFFICER WALKER: Okay. Is that
16 article mentioned in his report?

17 MR. POLK: He said in his report that
18 he --

19 THE WITNESS: It's not mentioned in my
20 report.

21 MR. POLK: Then I'll withdraw the
22 question.

23 BY MR. POLK:

24 Q. So then nothing that you mention in

1 your report has any GCMS results for
2 specifically THC acid in urine test from
3 secondhand smoke?

4 **MR. HERBERT:** Objection. Form of the
5 question.

6 **BY MR. POLK:**

7 Q. Isn't that correct?

8 **HEARING OFFICER WALKER:** Okay.

9 **MR. HERBERT:** Vague.

10 **HEARING OFFICER WALKER:** Sustained. Why
11 don't you rephrase that, please.

12 **BY MR. POLK:**

13 Q. Isn't it true that you also referenced
14 the report that we just talked about, the first
15 one, correct?

16 A. Yes.

17 Q. And isn't it true that we just went
18 over the results that were from an emit test
19 and there are no GCMS test results from urine
20 tests in that article, correct?

21 A. No, there are GCMS -- references GCMS
22 at page 252 in the bottom of the right-hand
23 column.

24 Any time there is an exact

1 number, 4.6, 23, these are all the results of
2 GCMS tests.

3 Q. Isn't it true that table two only
4 tells of the number of positive tests and not
5 any measurement of nanograms per milliliter of
6 marijuana metabolite in the urine?

7 A. You are wrong, sir.

8 Q. So you're saying, for instance,
9 subject A, 20 nanograms per milliliter it says
10 three, and that means that there's three
11 nanograms per milliliter in subject A's urine?

12 A. Yes.

13 Q. So that's not 20 nanograms per
14 milliliter, is it, that's three -- three is
15 less than 20, correct?

16 Doesn't it say, table one, urine
17 samples tested positive for cannabinoid
18 metabolites by emit assay after passive
19 exposure to marijuana smoke?

20 A. I was wrong. I was wrong. I
21 apologize for saying you were wrong. The
22 subject A had -- was tested three times and had
23 three test results that exceeded that. The
24 total number of results was 23. But the -- all

1 number, it has to be GCMS. Whether or not
2 something exceeded a threshold or not is based
3 on emit alone. If there is a specific number,
4 that sample would always be taken to GCMS for
5 quantification and identification.

6 Q. Could you please point to me in this
7 article where there are GCMS results from a
8 urine test, any specific numbers?

9 A. Well, the urine -- at page 252, the
10 bottom of the right-hand column, it says urine
11 samples were tested for cannabinoids by emit
12 20, table two, had an overall confirmation of
13 the metabolite Delta 9 THC carboxylic acid by
14 GCMS of 84.9 percent. That means that all
15 these -- anything that showed a positive was
16 taken to GCMS and reported, and there was an 85
17 percent correlation between exceeding the
18 threshold and having a positive.

19 Emit tests do not provide a
20 number. They just show positive or negative.

21 Q. And my question is, where is the data
22 for the GCMS?

23 A. It's presented in table two. Any time
24 you see number, a whole number, or -- yeah, a

1 of the emit tests that were positive were
2 tested with using GCMS, according to the
3 sentence that I read at the bottom of page 252
4 in the right-hand column.

5 Q. So again my question is, isn't it true
6 that there's no GCMS data in this article?

7 A. That's true.

8 Q. So you don't know based on this
9 article the only one you reference in your
10 report the specific level of THCA metabolite in
11 the urine of these test subjects, correct?

12 A. No, it's not reported.

13 Q. So isn't it true that the two tests
14 that the City of Chicago Police Department
15 performed, neither of those two tests at the
16 concentration levels that they performed them
17 at were performed in this study?

18 A. Well, as I understand, the first test
19 was an emit test, and it was reported as
20 positive which means that there was a detection
21 of greater than 50 nanograms. And the second
22 test -- so that would be the same as what's
23 done in this study.

24 Q. Is it true --

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1 A. At a different level.
2 Q. Exactly. Isn't it true they did a
3 20 -- emit 20 assay and emit 100 assay in this
4 study?
5 A. Yes.
6 Q. And they did not do an emit 50 assay,
7 which is what the City of Chicago uses and what
8 the federal guidelines are?
9 A. Yes.
10 MR. POLK: No further questions.
11 HEARING OFFICER WALKER: Redirect.
12 **REDIRECT EXAMINATION**
13 BY MR. HERBERT:
14 Q. Just briefly.
15 Doctor, you cited this article.
16 My question to you is, do you believe that this
17 article supports your opinion that the results
18 for Sergeant Bennett's drug test were
19 environmental versus intentional inhalation?
20 A. Yes, I do.
21 Q. Why?
22 A. Well, it's -- documentation from the
23 literature that -- it's well established that
24 secondhand smoke from marijuana is absorbed.

1 per milliliter of THCA in his urine?

2 A. Not this article.

3 MR. POLK: Nothing further.

4 MR. HERBERT: Nothing else.

5 HEARING OFFICER WALKER: Thank you,

6 Doctor. You may be excused. Don't forget your

7 microphone.

8 THE WITNESS: Thank you.

9 (Witness excused.)

10 (Witness was duly

11 sworn.)

12 THOMAS McMAHON,

13 called as a witness herein, after having been

14 first duly sworn, was examined and testified as

15 follows:

16 DIRECT EXAMINATION

17 BY MR. HERBERT:

18 Q. Good afternoon, sir, how are you?

19 A. Good. How are you, sir?

20 Q. Good. Please introduce yourself and

21 spell your last name.

22 A. Thomas McMahon. M-C-M-A-H-O-N. I'm a

23 retired captain, Chicago Police Department, 37

24 years of service.

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1 This goes further to document exactly how much
2 and what percentage of positives, the precise
3 amount in test subjects, a very limited number
4 of test subjects, but the basic premise of my
5 opinions and my reliance and reference to this
6 article was that I didn't inhale. I was in the
7 room. It can cause positive test, indeed
8 the -- what was really another focus of this is
9 can someone get high from being in a room with
10 smoke. They essentially said there's not much
11 evidence to support that. Subjectively there
12 may be a placebo effect.

13 Q. Is there anything in this article that
14 would contradict your opinion that the result
15 was more likely environmental for Sergeant
16 Bennett than intentional?

17 A. No, sir, I don't think so.

MR. HERBERT: Nothing else. Further
CROSS.

RECROSS-EXAMINATION

21 BY MR. POLK:

22 Q. Is there anything in this article that
23 supports that the exposures that Sergeant
24 Bennett described could result in 33 nanograms

1 Q. Okay. And, Captain, when did you
2 retire from the police department?
3 A. **2010.**
4 Q. What have you been doing since your
5 retirement, work wise?
6 A. **Work wise, I am on staff with Calumet**
7 **College of St. Joe's in Whiting, Indiana. We**
8 **have a -- for college credit we -- it's a**
9 **college and I'm teaching Chicago police**
10 **officers who are getting their degrees,**
11 **undergraduate degree, in criminal justice. I'm**
12 **also on the staff at Chicago State University**
13 **with their criminal justice department.**
14 Q. Okay. And as a police officer with
15 the City of Chicago, fair to say that you were
16 promoted to the rank from patrolman to sergeant
17 to lieutenant to captain?
18 A. **Yes, sir.**
19 Q. Okay. And did you work in various
20 districts throughout the City?
21 A. **Yes. My career expanded not only**
22 **district law enforcement but gang crimes**
23 **detective division. As a lieutenant I was on**
24 **Superintendent Hillard's staff. As lieutenant**

1 in charge of crime in the Austin unit. When I
2 was promoted to captain, I was assigned to the
3 fifth police district, Calumet district, the
4 south side, southeast side of Chicago.

5 Q. What's your educational background?

6 A. I have an undergraduate in master's
7 degree in criminal justice from the Chicago
8 State University.

9 Q. And, Captain, you know my client,
10 correct?

11 A. Yes, sir, I do.

12 Q. And how is it that you know Duane
13 Bennett?

14 A. I know Duane Bennett when Duane came
15 to the fifth district as a supervisor. He came
16 there as a sergeant. He elected to come there.
17 He used the transfer bid process to come there.
18 And I was on midnights. And that's when I
19 first met him. And --

20 Q. Do you remember approximately what
21 year that was?

22 A. I would estimate somewhere around
23 2008.

24 Q. And have you kept up communication

1 reputation he had on the police department?
2 A. Amongst the coworkers, those police
3 officers that worked for him, he had an
4 outstanding reputation. Kind of a guidance
5 counselor. He was one of those individuals who
6 would sit down and talk to officers and guide
7 them. Great motivator. He was able to
8 motivate these younger officers. And actually
9 get them to excel.

10 Q. And as far as getting to know him
11 better as a person, have you been able to
12 determine what type of character he has as a
13 man?

14 A. After I retired in 2010, I kept up my
15 acquaintance, and now I would consider a strong
16 friendship with Duane Bennett over these years.
17 I find him to be an exceptional person.

18 MR. HERBERT: I have nothing further.
19 Thanks.

20 THE WITNESS: Thank you.

21 HEARING OFFICER WALKER:

22 Cross-examination.

23 MR. POLK: No cross-examination.

24 HEARING OFFICER WALKER: Thank you, sir.

1 with Duane during that time period?

2 A. Yes. Subsequent to that I was moved
3 from the midnight watch to the day watch. And
4 Duane Bennett, Sergeant Bennett, actually came
5 on the day watch. So he was part of my
6 supervisory staff.

7 Q. Okay. And did you have the
8 opportunity to observe Duane Bennett work as a
9 sergeant?

10 A. On a regular basis.

11 Q. How would you characterize his work
12 when he worked for you?

13 A. Excellent worker. Good decisionmaker.
14 Excellent at critical thinking. Had a great
15 understanding of the general orders and job
16 knowledge. And he had experience. His
17 experience from being a tactical officer in the
18 21st District helped guide a lot of the younger
19 police officers we had. So he was an excellent
20 field supervisor. Exceptionally ethical and
21 moralistic.

22 Q. How about did you have the opportunity
23 to speak to any of his coworkers or people that
24 worked for him to determine what type of

1 You may be excused.

2 THE WITNESS: Thank you, ma'am.

3 (Witness excused.)

4 (Witness was duly
5 sworn.)

6 RICHARD BEDNAREK,
7 called as a witness herein, after having been
8 first duly sworn, was examined and testified as
9 follows:

10 DIRECT EXAMINATION

11 BY MR. HERBERT:

12 Q. Good afternoon, sir. How are you?

13 A. I'm fine.

14 Q. Good. Please introduce yourself and
15 spell your last name for the court reporter.

16 A. My name is Richard Bednarek. B, as in
17 boy, E-D-N-A-R-E-K.

18 Q. And, sir, by whom are you employed?

19 A. I'm employed by the City of Chicago.
20 Chicago Police Department.

21 Q. How long have you been a police
22 officer?

23 A. Since 1986.

24 Q. And what rank do you currently hold?

1 **A. I currently hold the rank of sergeant**
2 **of police.**

3 **Q. And approximately what year did you**
4 **become promoted to sergeant?**

5 **A. I was promoted to sergeant in 1997.**

6 **Q. And you know my client Duane Bennett?**

7 **A. Yes, I do.**

8 **Q. And how is it that you know him?**

9 **A. I first met Duane when he came to the**
10 **21st District for his training as a police**
11 **officer. I was an FTO at the time. I was not**
12 **his training officer.**

13 **But, you know, I trained one of**
14 **the recruits, Jim Mureski, that came on the job**
15 **with him. I don't know if they were exact**
16 **classmates or not, but he was my recruit.**
17 **That's how I met Duane for the first time.**

18 **Q. That would have been Duane's first job**
19 **out of the academy?**

20 **A. Correct.**

21 **Q. Approximately 22 years ago?**

22 **A. Yes.**

23 **Q. And did you work with Duane during**
24 **that time period?**

1 **due to crossing. I would be either 20, or he**
2 **would be 30, ten, obviously switching around**
3 **all the time, but we would cross paths and work**
4 **together, and then everything from simple**
5 **disturbances to homicides, to robberies and all**
6 **sorts of different assignments that were**
7 **prevalent and still are in the sixth district**
8 **today.**

9 **Q. And did you keep up a friendship with**
10 **Duane Bennett since that time you worked with**
11 **him in the sixth district?**

12 **A. Yes. We would**

13 **occasionally -- obviously talk via cell phone**
14 **mostly, but occasionally we'd get together for**
15 **lunch or something. Nothing major. I was**
16 **never at his birth of any of his children. But**
17 **we did keep in touch.**

18 **Q. Okay. And how would you characterize**
19 **Duane Bennett's work as a police officer and a**
20 **sergeant?**

21 **A. Duane Bennett was a very model police**
22 **officer and sergeant. He was very**
23 **knowledgeable, very intelligent, and very good**
24 **family man. Everything -- everything that I**

1 **A. Not that I worked directly with him.**
2 **We were never assigned as partners, but**
3 **obviously being in the same district, the 21st**
4 **district. There were different jobs and**
5 **different assists that we would cross paths on**
6 **numerous times.**

7 **Q. And did you and Duane stop working in**
8 **the same district at some point?**

9 **A. I got a new assignment to the gangs**
10 **west unit, but it wasn't until 1998 after I was**
11 **assigned to the sixth district Duane was**
12 **promoted to sergeant and he was assigned to**
13 **sixth, and that's when I worked with him**
14 **extensively. We were assigned to the same**
15 **watch.**

16 **Q. If you can describe that. How long**
17 **you worked with Duane as a sergeant together in**
18 **the sixth district?**

19 **A. I believe it was approximately about**
20 **two years, two and a half years. And we were**
21 **assigned to the third watch. And we basically**
22 **were doing roll calls together. We were on the**
23 **street together. Obviously we backed each**
24 **other up for different assignments, and again**

1 **strived to be and continue to be to this day.**

2 **Q. Okay. And how about have you spoken**
3 **to any of Duane's coworkers or people that work**
4 **for him, and have you been able to ascertain**
5 **what his reputation is like on the police**
6 **department?**

7 **A. Everyone I spoke to who has worked**
8 **under Duane or with Duane basically said the**
9 **same opinion, there is -- I mean nobody that I**
10 **bumped into had anything majorly bad to say.**
11 **Some people might have been a little upset that**
12 **he went to their jobs and ensured that they did**
13 **it right, which wasn't always the easiest way.**
14 **But again, it always followed the department**
15 **procedure and law and had to be done.**

16 **Q. And how about as far as your knowledge**
17 **of Duane Bennett socially, have you ever known**
18 **him to be an individual that would smoke**
19 **marijuana?**

20 **A. No.**

21 **Q. Or use it in any other fashion?**

22 **A. No, I've never seen him or never**
23 **even -- after he would come to work --**
24 **obviously, we all had family functions and**

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1 parties and we'd come to work the next day or
2 later after the event, and there was never any
3 sign of any impairment that I ever observed at
4 all.

5 **MR. HERBERT:** Nothing further.

6 **HEARING OFFICER WALKER:** Cross.

7 **MR. POLK:** No cross-examination.

8 **HEARING OFFICER WALKER:** Thank you. You
9 may be excused.

10 **THE WITNESS:** Thank you.

11 (Witness excused.)

12 (Witness was duly
13 sworn.)

14 PATRICIA CIARA,
15 called as a witness herein, after having been
16 first duly sworn, was examined and testified as
17 follows:

18 **DIRECT EXAMINATION**

19 **BY MR. HERBERT:**

20 Q. Good afternoon, sir. How are you?

21 A. Good.

22 Q. Please introduce yourself and spell
23 your last name for the court reporter.

24 A. My name is Daniel Lockard.

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1 Bennett?

2 A. On several occasions, yes.

3 Q. With his family as well?

4 A. I did, yes.

5 Q. And how about the neighborhood, have
6 you spoken to people that live in the same
7 neighborhood as you as to what type of
8 reputation Duane has in the neighborhood?

9 A. I have, yes.

10 Q. How would you characterize his
11 reputation?

12 A. He has the highest reputation you can
13 have. Everybody thinks highly of him. He is a
14 good neighbor, a good friend. Basically him
15 and his wife babysat my oldest guys for a year
16 when both my wife and I were working. Felt
17 very comfortable leaving my kids with him.
18 They're grown up with his kids together.

19 Q. Have you ever known or have you ever
20 heard anything from talking to the neighbors
21 about Duane Bennett liking to smoke marijuana
22 or ingest marijuana in any way?

23 A. Absolutely not, never have.

24 Q. As far as Duane Bennett as a police

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1 L-O-C-K-A-R-D.

2 Q. And, Mr. Lockard, by whom are you
3 employed?

4 A. Chicago Police Department.

5 Q. How long have you been a Chicago
6 police officer?

7 A. Since 1989.

8 Q. And what rank do you currently hold?

9 A. Sergeant.

10 Q. And do you know my client Duane
11 Bennett?

12 A. I do.

13 Q. How is it you know Sergeant Bennett?

14 A. Duane and I lived across the street
15 from each other for several years. And we
16 worked the squad car together as patrolmen in
17 21 back in the early '90s. And I still live in
18 the neighborhood. I'm around the corner now.

19 Q. Around the corner from Duane Bennett?

20 A. One block away.

21 Q. And would you consider yourself a
22 friend of Duane Bennett's?

23 A. Absolutely.

24 Q. And have you socialized with Duane

1 officer, you obviously worked with him, you had
2 the ability to observe him work.

3 How would you characterize his
4 work as an officer?

5 A. He is a very hard worker. He's had a
6 lot of tougher assignments than I have
7 throughout my career, so I kind of -- not
8 envied him, but had more respect for him, and
9 the jobs he's been doing throughout the year on
10 the department.

11 Q. How about the people that worked for
12 him and worked with him, what type of
13 reputation did he have with those individuals?

14 A. He had a great reputation. Everybody
15 wanted -- everybody liked being with him when
16 he was on the tact teams back in the day. They
17 were very close. All backed each other up. It
18 was a very close-knit group of guys.

19 The watch was the same way, when
20 we had watches, when we went around the clock,
21 they were very close. And just the highest
22 feelings for him.

23 Q. And, finally, what type of character
24 as a man do you think Duane Bennett has?

<p>1 Q. You said that you've gotten to know 2 Sergeant Bennett on a personal level? 3 A. Correct. 4 Q. And when did that personal friendship 5 start and how would you characterize it? 6 A. 1992, I was best friends with his 7 sister. We have shared Thanksgiving, Christmas 8 meals together, graduation parties. I have 9 been to his home with his family there and been 10 invited. He has been invited to my home. And 11 so we have -- we have socialized since 1992. 12 Q. Have you ever known Duane Bennett to 13 be somebody that uses marijuana? 14 A. Never. 15 Q. What type of character does Duane 16 Bennett have as a person? 17 A. As far as I'm concerned, the best. 18 Aces. 19 MR. HERBERT: Thank you. Nothing further. 20 HEARING OFFICER WALKER: Cross? 21 MR. POLK: No cross. 22 HEARING OFFICER WALKER: Thank you. You 23 may be excused. 24 (Witness Excused.)</p>	<p>1 A. Yes. 2 Q. And were you patrolman prior to that? 3 A. Yes. 4 Q. And where do you currently work? 5 A. Sixth district. 6 Q. And is that the only place that you've 7 worked as a lieutenant? 8 A. No, I worked the third district as 9 lieutenant as well. 10 Q. And as a sergeant, where did you work? 11 A. Worked in the detective division, plus 12 I worked in the fifth district. 13 Q. And as patrolman, where did you work? 14 A. As patrolman then I got promoted to 15 agent in the Internal Affairs Division. 16 Q. And what type of work did you perform 17 while in internal affairs? 18 A. Everything. I worked in the 19 confidential section. 20 Q. How long did you work there? 21 A. 11 years. 22 Q. Okay. And you know my client Duane 23 Bennett, correct? 24 A. Yes, I do.</p>
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<p>1 (Witness was duly 2 sworn.) 3 RONALD FORGUE, 4 called as a witness herein, after having been 5 first duly sworn, was examined and testified as 6 follows: 7 DIRECT EXAMINATION 8 BY MR. HERBERT: 9 Q. Good afternoon, Lieutenant. How are 10 you? 11 A. Good, sir. 12 Q. Please introduce yourself, spell your 13 last name for the court reporter. 14 A. Lieutenant Ronald Forgue, F-O-R-G-U-E. 15 Q. And you're a lieutenant for the 16 Chicago Police Department, correct? 17 A. Yes, sir. 18 Q. How long have you been employed by the 19 Chicago Police Department? 20 A. 27 years. 21 Q. How long have you held the rank of 22 lieutenant? 23 A. Since September. 24 Q. And prior to that, you were sergeant?</p>	<p>1 Q. How is it you know Duane Bennett? 2 A. I know Duane from the fifth district 3 and also from the neighborhood, his son played 4 basketball with my son. 5 Q. And as far as -- when did you first 6 meet approximately Duane Bennett on the police 7 department? 8 A. When I was in the fifth district. 9 Q. And approximately what year was that? 10 A. Maybe ten years ago. 11 Q. And did you work with Duane Bennett? 12 A. Yes, I did. 13 Q. And how would you characterize the 14 work that Duane Bennett performed as a police 15 officer? 16 A. Duane is a guy you want beside you. 17 He responded to -- every call you were on he 18 was right there next to you. 19 Q. Did you have the ability to determine 20 whether or not he was honest or had integrity 21 as a police officer? 22 A. Absolutely he had integrity. 23 Q. And what about his representation 24 amongst his coworkers, were you ever able to</p>

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1 speak with any of those individuals and
2 determine what his representation was like?
3 **A.** They loved Duane. He was fair, you
4 know. By the rules. But fair. He made sure
5 cars were available. And the other thing was
6 number one thing was officer safety.

7 Q. As far as your knowing Duane socially,
8 you said that you know him because Duane
9 coached your son in basketball?

10 **A. Yes.**

11 Q. And would you characterize your
12 relationship with him as a friendship?

13 **A. Yes.**

14 Q. Okay. And you said that you're from
15 the same neighborhood or you currently reside
16 in the same neighborhood?

17 **A. Correct.**

18 Q. Have you been out socially with Duane
19 Bennett?

20 **A. Once or twice.**

21 Q. And have you spoken to any of the
22 neighbors that know Duane Bennett?

23 **A. Yes.**

24 Q. And what type of reputation does he

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1 have in the neighborhood?
2 **A. Standup guy. A parent that's
3 involved. One that you could trust your kid
4 with. That one you wouldn't think twice about,
5 okay, that's fine.**

6 Q. And that coaching position that he
7 held with your son, that was a volunteer
8 position?

9 **A. Yes.**

10 Q. And finally, did you ever know Duane
11 Bennett to be a marijuana smoker or ingesting
12 it in any other way?

13 **A. Absolutely not.**

14 Q. Did anyone in the neighborhood ever
15 tell you that he had a representation of
16 smoking marijuana or anything along those
17 lines?

18 **A. Absolutely not.**

19 Q. Nothing further.

20 **HEARING OFFICER WALKER:**

21 Cross-examination.

22 **MR. POLK:** No cross.

23 **HEARING OFFICER WALKER:** Thank you, sir.
24 You may be excused.

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1 **A. I've worked for him for the past four
2 years approximately.**

3 Q. And when you say you worked for him,
4 he was your sergeant?

5 **A. Yes.**

6 Q. And was a tact team or on the watch?

7 **A. On the watch.**

8 Q. Okay. And how would you characterize
9 Sergeant Bennett as a supervisor?

10 **A. He is one of the finest supervisors on
11 the street.**

12 Q. Why do you say that?

13 What about Duane Bennett makes
14 him being one of the finest sergeants on the
15 street?

16 **A. When you hear him responding to the
17 job, you know it's going to be all right. That
18 it's going to be handled with dignity, honesty,
19 professionalism, and you have a good sergeant
20 who's doing his job, and knows how to do his
21 job.**

22 Q. How about your coworkers, what type of
23 reputation does Sergeant Bennett have with the
24 people that are under his command?

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(Witness Excused.)

(Witness was duly
sworn.)

OFFICER BAADER,

called as a witness herein, after having been
first duly sworn, was examined and testified as
follows:

DIRECT EXAMINATION

BY MR. HERBERT:

10 Q. Good afternoon, Officer. How are you?

11 **A. Good afternoon, I am well.**

12 Q. Please introduce yourself and spell
13 your last name.

14 **A. I'm Officer Baader, B-A-A-D-E-R.**
15 Chicago Police Department.

16 Q. And where do you work right now?

17 **A. I work in the fifth district.**

18 Q. And that's as a patrol officer?

19 **A. Yes.**

20 Q. How long have you been a Chicago
21 police officer?

22 **A. Ten years.**

23 Q. How do you know my client Duane
24 Bennett?

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1 **A. He is extremely well liked and
2 respected.**

3 Q. And have you been able to determine
4 what type of character he has as a person
5 during the years that you've known him?

6 **A. Yes. He has also become a very good
7 friend of mine.**

8 Q. Have you ever known Duane Bennett to
9 be somebody that uses marijuana?

10 **A. No.**

11 Q. Did you ever hear anyone talk about
12 Duane Bennett using marijuana in any way?

13 **A. No, absolutely not.**

14 **MR. HERBERT:** I have nothing further.

15 **HEARING OFFICER WALKER:** Any cross?

16 **MR. POLK:** No cross.

17 **HEARING OFFICER WALKER:** Thank you. You
18 may be excused.

19 (Witness Excused.)

20 (Discussion off the
21 record.)

22 **HEARING OFFICER WALKER:** Let's go back on
23 the record.

24 Any other witnesses for today,

1 **STATE OF ILLINOIS)** SS:
2 **COUNTY OF COOK)**

3
4 MAUREEN A. WOODMAN, C.S.R., being first
5 duly sworn, says that she is a court reporter
6 doing business in the City of Chicago; that she
7 reported in shorthand the proceedings had at
8 the hearing of said cause; that the foregoing
9 is a true and correct transcript of her
10 shorthand notes, so taken as aforesaid, and
11 contains all the proceedings of said hearing.

12
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14
15 MAUREEN A. WOODMAN

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1 Mr. Herbert?

2 **MR. HERBERT:** No more today.
3 **THE WITNESS:** All right. We previously
4 did off-the-record discussion for a continued
5 date for the hearing when the Department's
6 expert will be available for rebuttal, and then
7 the Respondent's remaining witnesses, and then
8 closing arguments and that's going to be June
9 5, 2013, at 1:30 p.m. That's all for today.

10 (WHEREUPON, the proceedings
11 were adjourned and continued
12 to June 5, 2013, at the hour
13 of 1:30 p.m.)

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